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LONGS DRUG STORES, CALIFORNIA, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JULIE KOTOVSKY, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

LONGS DRUG STORES, CALIFORNIA,
INC.,

Defendant.

) Case No.: CV 07-0713 VRW

)

) CLASS ACTION

)

) Hon. Vaughn R. Walker

)

) **JOINT STIPULATION AND**

) ~~**PROPOSED**~~ **ORDER TO STAY**

) **ACTION PENDING NINTH**

) **CIRCUIT'S REVIEW OF CLASS**

) **CERTIFICATION IN FACTA CASES**

)

1 Plaintiff Julie Kotovsky ("Plaintiff") and Defendant Longs Drug Stores, California,
2 Inc. ("Defendant"), by and through their respective counsel, jointly submit the following
3 stipulation to the Court for its consideration and jointly submit the attached proposed order
4 staying the above referenced matter in its entirety, pending decision by the Ninth Circuit
5 Court of Appeals ("Ninth Circuit") in the appeals, pursuant to Rule 23(f) of the Federal Rules
6 of Civil Procedure, in *Soualian v. International Coffee & Tea, LLC*, Case No. CV 07-502
7 RGK (JCx) (C.D. Cal.), *leave to appeal granted*, Appellate Dkt No. 07-56377 (9th Cir.
8 Sept. 13, 2007) ("*Soualian*"), and in *Reynoso v. South County Concepts*, Case No. CV 07-373
9 JVS (C.D. Cal.), *leave to appeal granted*, Appellate Dkt No. 07-80191 (9th Cir. Jan. 14, 2008)
10 ("*Reynoso*").

11 The background and circumstances which establish good cause for the stay are as
12 follows:

13 WHEREAS, Plaintiff in this putative class action alleges that Defendant willfully
14 violated a provision of the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"), 15
15 U.S.C. § 1681c(g), which provides, in pertinent part, that "no person that accepts credit cards
16 or debit cards for the transaction of business shall print more than the last 5 digits of the card
17 number or the expiration date upon any receipt provided to the cardholder at the point of the
18 sale or transaction";

19 WHEREAS, in *Soualian* and *Reynoso*, the respective plaintiffs similarly allege that the
20 defendant in their respective actions willfully violated 15 U.S.C. § 1681c(g);

21 WHEREAS, on August 28, 2007, this Court stayed the instant action in its entirety
22 pending a determination in the Ninth Circuit on whether to hear the interlocutory appeals from
23 orders denying class certification in six Central District of California FACTA cases including
24 *Soualian* and further ordered that, if the Ninth Circuit determined to hear any such appeals,
25 this action would remained stayed until all appeals are exhausted including any review by the
26 United States Supreme Court;

27 WHEREAS, on September 13, 2007, the Ninth Circuit granted a motion under Rule
28 23(f) of the Federal Rules of the Civil Procedure permitting the plaintiff in *Soualian* to appeal

1 the District Court's ruling denying her motion for class certification on the ground that a class
2 action would not be a "superior" method of adjudication under FED.R.CIV.P. 23(b)(3) because
3 of the magnitude of the potential damage award;

4 WHEREAS, on December 11, 2007, this Court issued an Amended Pretrial Order
5 permitting class discovery and scheduling a class certification hearing for July 8, 2007;

6 WHEREAS, on January 14, 2008, the Ninth Circuit granted a motion under Rule 23(f) of
7 the Federal Rules of the Civil Procedure permitting the defendant in *Reynoso* to appeal the
8 District Court's ruling granting plaintiff's motion for class certification, *inter alia*, on the ground
9 that the magnitude of the potential damage award does not affect the superiority of a class action
10 for adjudication of the case;

11 WHEREAS, in the instant action, Defendant (as in *Soualian* and *Reynoso*) intends to
12 oppose Plaintiff's motion for class certification, *inter alia*, on the ground that a class action
13 would not be a superior method of adjudication under FED.R.CIV.P. 23(b)(3) because of the
14 magnitude of the potential damage award;

15 WHEREAS, in *Soualian*, the appellant Soualian's opening brief was filed on January
16 16, 2008, the appellee International Coffee's brief is due on February 26, 2008, and
17 appellant's reply brief, if any, is due on March 11, 2008;

18 WHEREAS, in *Reynoso*, the appellant South County Concepts' opening brief is due
19 May 1, 2008, the appellee Reynoso's brief is due on June 2, 2008, and appellant's reply brief,
20 if any, is due within fourteen days of service of the appellee's brief;

21 WHEREAS, prior to and since the Ninth Circuit's grant of review in *Soualian*, district
22 courts in the Central and Northern Districts of California stayed the following FACTA cases
23 pending the Ninth Circuit's decision in *Soualian*:

- 24 1. *Dister v. Benetton*, Case No. C 07-01379 SI (N.D. Cal. Feb. 22, 2008);
- 25 2. *Moon v. FedEx Kinko's Office and Print Services, Inc.*, Case No. C 06-7657
26 SI (N.D. Cal. Jan. 9, 2008);

3. *Hile v. The Body Shop Int'l PLC*, Case No. C 07-791 JSW (N.D. Cal. Jan. 9, 2008);
4. *Serna, et al. v. Costco Wholesale Corporation*, Case No. CV 07-1491 AHM (JWJx) (C.D. Cal. Jan. 3, 2008);
5. *Hile v. Max Rave LLC*, Case No. C 07-738 JSW (N.D. Cal. Dec. 7, 2007);
6. *Lopez v. The Gymboree Corp.*, Case No. C 07-0087 SI (N.D. Cal. Nov. 1, 2007);
7. *Figueroa v. Walt Disney Parks and Resorts, Inc.*, Case No. SACV 07-0019-DOC (ANx) (C.D. Cal. Oct. 30, 2007) (staying action *sua sponte*);
8. *Saunders v. Claim Jumper Restaurants, LLC*, Case No. CV 07-0168-DOC (ANx) (C.D. Cal. Oct. 23 and 26, 2007);
9. *Vigdorich v. Century Theatres, Inc.*, Case No. C 07-00736 MMC (N.D. Cal. Oct. 25, 2007);
10. *Soualian v. Barney's New York, Inc.*, Case No. CV 07-0558-GW (FFMx) (C.D. Cal. Oct. 25, 2007);
11. *Saunders v. The Johnny Rockets Group, Inc.*, Case No. SACV 07-0172-CJC (ANx) (C.D. Cal. Oct. 15, 2007);
12. *Price v. Pacific Theaters*, Case No. CV 07-00929-ER (Ex) (C.D. Cal. Oct. 15, 2007);
13. *Aeschbacher v. California Pizza Kitchen*, Case No. CV 07-00215-VBF (JWJx) (C.D. Cal. Oct. 11, 2007);
14. *Farkash v. Bear Creek Stores, Inc., dba Harry and David*, Case No. CV 07-00309-ER (SHx) (C.D. Cal. Oct. 11, 2007);
15. *Libman v. bebe Stores, Inc.*, Case No. CV 07-972-ABC (Ex) (C.D. Cal. Oct. 5, 2007);
16. *Saunders v. Fuddrucker's, Inc.*, Case No. CV 07-0953-GW (RZx) (C.D. Cal. Sept. 27, 2007) (staying action *sua sponte*);
17. *Dister v. Benetton*, Case No. C 07-01379 MJJ (N.D. Cal. Sept. 21, 2007);

1 18. *Saunders v. In-N-Out Burgers*, Case No. CV 07-00169-GW (MLGx) (C.D.
2 Cal. Sept. 10, 2007) (staying action *sua sponte*);

3 WHEREAS, the parties agree that the Ninth Circuit's decisions in *Soualian* and
4 *Reynoso* will likely provide important guidance to this Court and to the parties with respect to
5 whether class treatment of Plaintiff's FACTA claim is superior to individual actions under
6 FED.R.CIV.P. 23(b)(3);

7 WHEREAS, the parties agree that this Court has discretion to control its docket to
8 serve the interests of justice and judicial economy, *Moses H. Cone Mem. Hosp. v. Mercury*
9 *Constr. Corp.*, 460 U.S. 1, 20, n. 23 (1983); *Adams v. California Dep't of Health Svcs.*, 487
10 F.3d 684, 688 (9th Cir. 2007);

11 WHEREAS, the parties agree that a stay of this action will conserve judicial and party
12 resources, avoid unnecessary expenditures of time, effort, and money, and serve the interests
13 of justice and judicial economy, *see Figueroa v. Walt Disney Parks and Resorts*, Case No.
14 SACV 07-0019-DOC, slip op. at 3 (holding that "it would be a considerable waste of time and
15 effort for the parties and the Court to proceed with this action when the major point of
16 contention is likely to be resolved by the Ninth Circuit");

17 WHEREAS, the parties agree and request that the Court's Amended Pretrial Order of
18 December 11, 2007 be vacated and that this matter be set for a status conference every six (6)
19 months to determine whether it is appropriate to continue the stay of this action, and further
20 agree to file a joint status report with the Court two days prior to the status conference regarding
21 the status of the *Soualian* and *Reynoso* appeals;

22 WHEREAS, the parties further agree that the requested stay is not for the purposes of
23 delay, but so that the due process of the parties is protected and so that justice may be done; and

24 WHEREAS, the parties agree that this Stipulation may be executed in counterparts, and
25 that facsimile signatures shall be deemed acceptable signatures for the purposes of this
26 Stipulation.
27
28

1 **NOW, THEREFORE, FOR GOOD CAUSE SHOWN, THE PARTIES, BY AND**
2 **THROUGH THEIR UNDERSIGNED COUNSEL, HEREBY STIPULATE AS**
3 **FOLLOWS:**

4 1. That this action be stayed in its entirety pending resolution of the appeals in
5 *Soualian v. Int'l Coffee and Tea, LLC*, Appellate Dkt No. 07-56377 (9th Cir.), *Reynoso v.*
6 *South County Concepts*, Appellate Dkt No. 07-80191 (9th Cir. Jan. 14, 2008), and any
7 subsequent appeals filed in other FACTA class actions;

8 2. That this case remain stayed until all appeals are exhausted on the class
9 certification issue, including any review by the United States Supreme Court;

10 3. That the parties suggest to the Court that its Amended Pretrial Order of
11 December 11, 2007 be vacated, that this matter be set for a status conference every six (6)
12 months to determine whether it is appropriate to continue the stay of this action, and that the
13 parties file a joint status report with the Court two days prior to the status conference
14 regarding the status of the *Soualian* and *Reynoso* appeals;

15 4. That each party shall reserve the right to approach the Court at any time and,
16 upon a showing of good cause, seek modification, extension or termination of this order.

17 **IT IS SO STIPULATED.**

18 Dated: February 27, 2008

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ATTESTATION

I attest that signatories Greg L. Johnson, Daveed A. Schwartz, and Erin C. Carroll have concurred in the filing of this document.

Dated: February 27, 2008

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By: /s/ Eric A. Grover
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ORDER

Upon the Stipulation of the parties, and for good cause shown, this action is stayed in its entirety until the Ninth Circuit Court of Appeals renders a decision in *Soualian v. Int'l Coffee and Tea, LLC*, Appellate Dkt No. 07-56377 (9th Cir.) and/or *Reynoso v. South County Concepts*, Appellate Dkt No. 07-80191 (9th Cir. Jan. 14, 2008). The Court's Amended Pretrial Order of December 11, 2007 is hereby vacated. This case shall remain stayed until all appeals (if any) of those decisions are exhausted, including any review by the United States Supreme Court.

~~A status conference shall be set for _____ to determine whether it is appropriate to continue the stay of this action. Further status conferences on the appropriateness of this stay shall be set thereafter. The parties reserve the right to approach the Court at any time and, upon a showing of good cause, seek modification, extension or termination of this order.~~

The parties shall submit a report on July 1, 2008 as to the status of the appeals in *Soualian*, *Reynoso*, and other FACTA cases (if any), and any developments in this case. The parties also will inform the Court as to whether the stay should remain in place or be lifted.

IT IS SO ORDERED.

